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From:

Sent: Thursday, October 29, 2009 1:09:57 PM

To:

Cc:

Subject: Your question

I read through your email and have the following comments. Yes, the application of Section 530 and its requirements of substantive consistency, reporting consistency and reasonable basis must be considered first. It appears that the taxpayer is asserting that they are relying on section 530(a)(2)(C) industry practice as the reasonable basis for not treating the landmen as employees. The taxpayer cites to several surveys in its area of operation and in as support for satisfying the industry practice for treating the landmen as independent contractors. In order to satisfy industry practice, the taxpayer must show the industry practice existed at the time they purportedly relied on it for treating the landmen as independent contractors during the years at issue, show that they actually relied on it for treating the landman as contractors (i.e., that they knew of and relied on the cited surveys), and that such reliance on the industry practice was reasonable. While it is possible that knowledge of the purported industry practice could come in other ways, it appears that here taxpayer is asserting it relied on the surveys. If the taxpayer does not satisfy the requirements for section 530 relief then the Service can proceed on the worker classification issue, that is employee vs. independent contractor, so long as the facts support the reclassification. If you have any further questions, please let me know.